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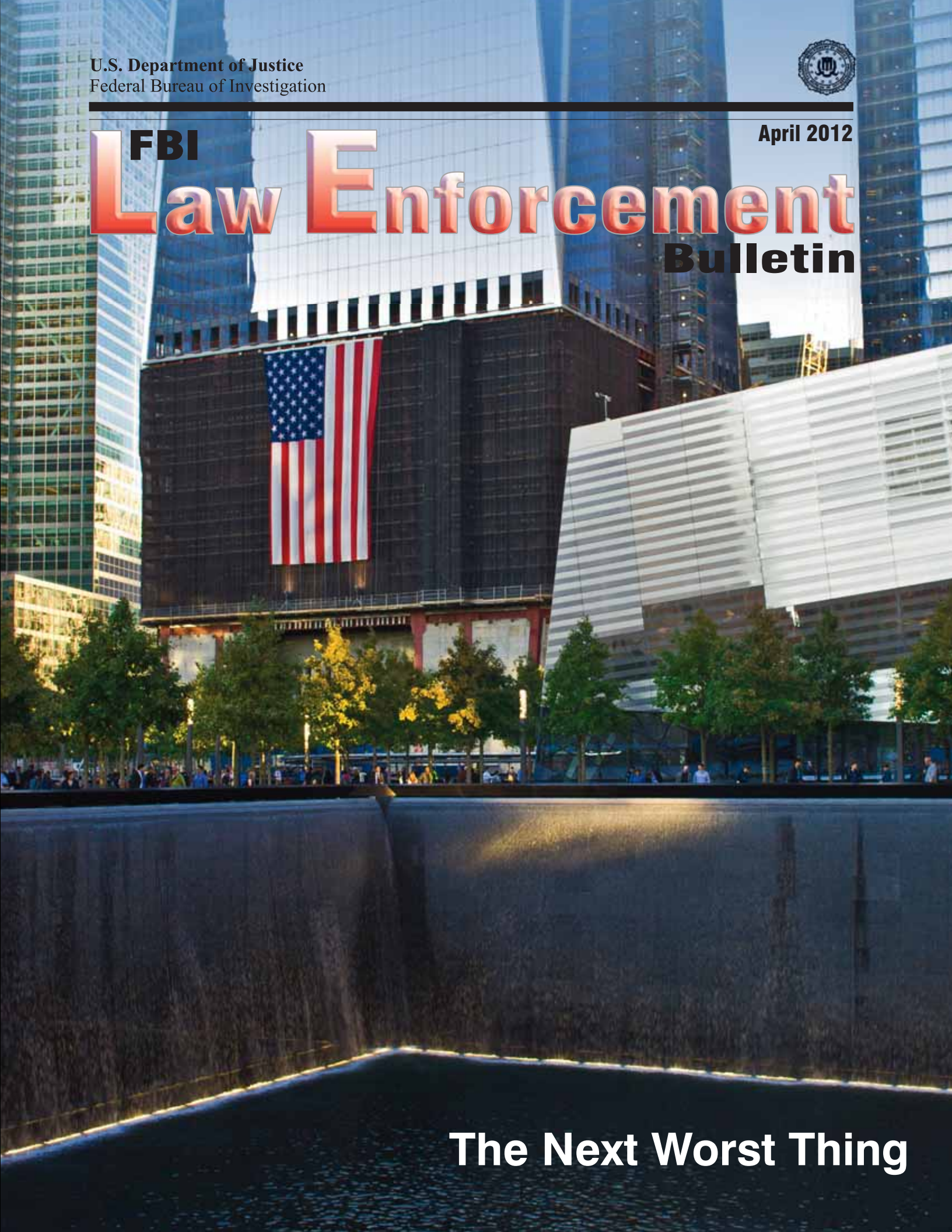

The Next Worst Thing

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FBI Law Enforcement Bulletin

Features

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The Next Worst Thing

By DAVID CID

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Without exception, any emerging threat displays warning signs before becoming a resilient crime problem. If such a threat surprises law enforcement agencies, it is because they did not recognize these signals or their significance. Anticipatory knowledge allows officers to take preemptive action to disrupt or suppress an emerging criminal or terrorist threat. Thus, helping investigators avoid surprise is one of the most important functions of strong intelligence.

Often, this anticipatory knowledge results from analyzing signals known as indicators and warnings. Lists of indicators and warnings exist for a wide array of criminal and terrorist acts. While becoming familiar with this information can prove helpful, simply memorizing a list of indicators and warnings will not suffice to prevent emerging threats or help investigators keep up with changing tactics of both criminals and terrorists. Further, the sheer number of criminal groups makes studying their tactics daunting. The list of recognized terrorist groups at one time included over 100 entries.

Additionally, the adversary will not remain static. When

law enforcement agencies employ new investigative techniques or crime suppression measures, criminals respond by changing their tactics. Criminal enterprises seek efficiency to maximize profits, and efficiency improvements may drive operational changes. New methods replace the old, new personalities replace previous ones, alliances and rivalries shift, and opportunities and challenges arise. These internal and external changes will foster new indicators and warnings for each threat. The list never will be complete, and, therefore, depending on the list alone leaves law enforcement officers vulnerable.

Agencies will develop better intelligence at an earlier stage of investigations if officers learn other tactics of intelligence gathering. These include identifying new indicators and warnings, deconstructing criminal or terrorist acts, learning how crime and terrorism tactics evolve, placing events and actions in context, analyzing the specific components of a threat, and using all of these tools to develop sound threat assessments. This helps law enforcement personnel develop a dynamic, intellectual framework for assessing current threats, as well as identifying the next worst possibility before it occurs.

Identifying the Signals

Gathering and analyzing indicators and warnings comprise crucial intelligence collection techniques. Indicators are discrete events or series of events, and warnings occur when the indicators reach a critical mass and an imminent threat looms. Investigators identify indicators and warnings by scanning the environment for actions that may or must occur prior to a criminal or terrorist act. Scanning encompasses an ongoing, holistic process that employs all of the tools and techniques of information collection, including reviewing citizen complaints, field interviews and contact reports, suspicious activity reports, community contacts and informants, and the results of ongoing investigations.

When identifying indicators and warnings, officers should focus on observable behaviors and actions, some clearly criminal and others merely suspicious, that indicate potential criminal or terrorist activity. Race, religion, ethnic origin, and political affiliation are not lawful or useful indicators of criminality, and considering them as such quickly will prove ineffective. Instead, by employing a behavior-based model, investigators maintain their moral high ground, their actions remain lawful, and they avoid the analytical pitfall of bias, which often leads in the wrong direction.

Examining Indicators and Warnings in Context

To further analyze indicators and warnings, investigators

"Anticipatory knowledge allows officers to take preemptive action to disrupt or suppress an emerging criminal or terrorist threat."

Mr. Cid serves as the executive director of the Memorial Institute for the Prevention of Terrorism (MIPT) in Oklahoma City, Oklahoma.

can examine a suspect's actions or patterns of behavior in conjunction with other events. Any action or series of actions provides information about the actor, some more definitively than others. Taken alone, they present only limited insights; however, all actions prove more meaningful when examined in context or in relation to the other circumstances that surround an event.

For example, a subject takes his family on a road trip from New York to California, with a northern route to Los Angeles and a southern route coming home. Prior to the trip, an investigator sees the subject engage in a series of actions that provides clues about his plans. When examined individually, each event presents several possible interpretations. When taken as a group, however, they point more definitively in one direction. The subject:

- has his car serviced, possibly suggesting good stewardship of his automobile, a mechanical problem with the vehicle, the anniversary of a required service date, or preparation for a car trip;
- purchases a GPS device, maybe indicating a poor sense of direction, a need to find local addresses efficiently, the purchase of a gift, or preparation for a car trip;

Figure 1

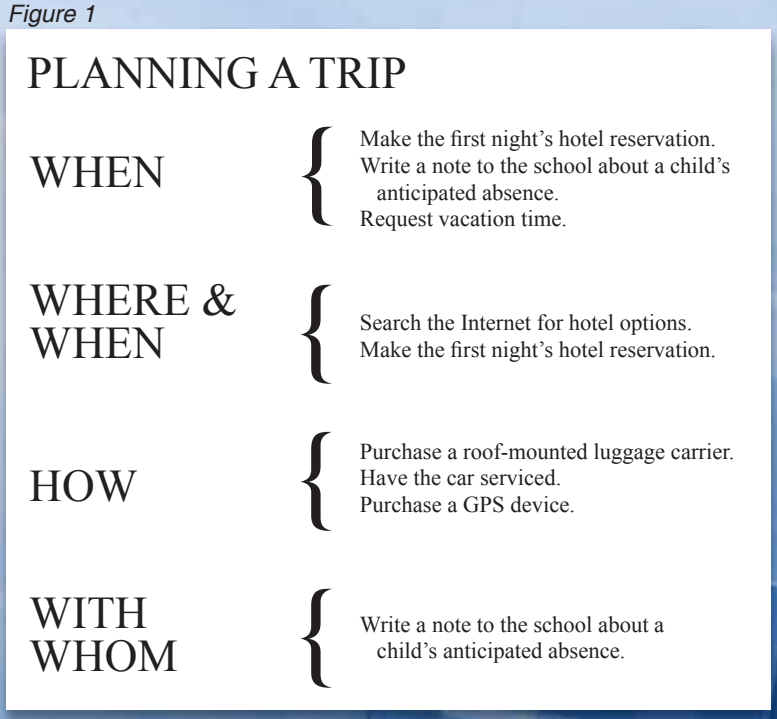
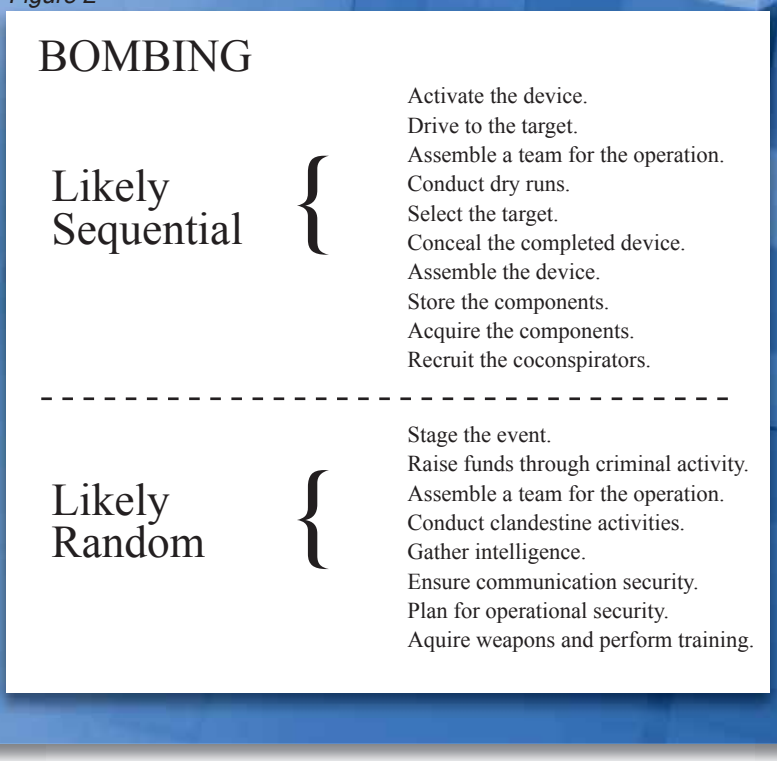


Figure 2



- searches the Internet for hotel options, perhaps suggesting that the subject needs a hotel room for an upcoming trip or that he wants to inquire about hotel rates in a particular city for future reference;
- makes the first night's hotel reservation, possibly showing that the subject and his family intend to spend the night in a particular city;
- writes a note to his children's school about an anticipated absence, perhaps suggesting the children will miss school on those days due to a trip, a family event, or other circumstances;
- requests a vacation, maybe indicating that the subject plans to be absent from his job for a specified period of time for any number of reasons; and
- purchases a roof-mounted luggage carrier, possibly showing the subject will use his vehicle for a trip at some point in the future or that he desires additional storage space in his vehicle.

When examined individually, any one of these actions does not provide strong clues to lead an investigator to a definitive hypothesis. However, analyzing them as a group provides context and allows the investigator to logically predict the subject's plans.

One way to develop context is to categorize events or actions according to the questions they answer. This provides insights and suggests a course of action (figure 1). In this example, even after analyzing the actions in context, questions remain unanswered (e.g., the subject's final destination and planned routes). But, with a high degree of certainty, the investigator can conclude that the subject plans to embark on a road trip, most likely with his children, for a specific period of time, and at the city where he reserved a hotel room. With this initial hypothesis, the investigator can employ other tactics to determine the final destination. As this example demonstrates, indicators and warnings rarely give a complete view of a subject's plans,

Figure 3

Recruitment of Coconspirators	Acquisition of Components	Storage of Components	Assemblage of Device
Secret communications with individuals	Unusual or structured purchases of high nitrate fertilizer	Rental of storage space	Clandestine meetings
Association with known terrorists or their supporters	Unusual or structured purchases of fuel oil	Purchase of metal drums	Purchase of protective clothing
Clandestine meetings with persons	Acquisition of manuals on explosives	Purchase of dolly or other moving equipment	Chemical stains on hands or clothing
Application of operational security to a meeting	Acquisition of igniter		Medical attention for chemical burns or inhalation

but they can point the investigator in the right direction.

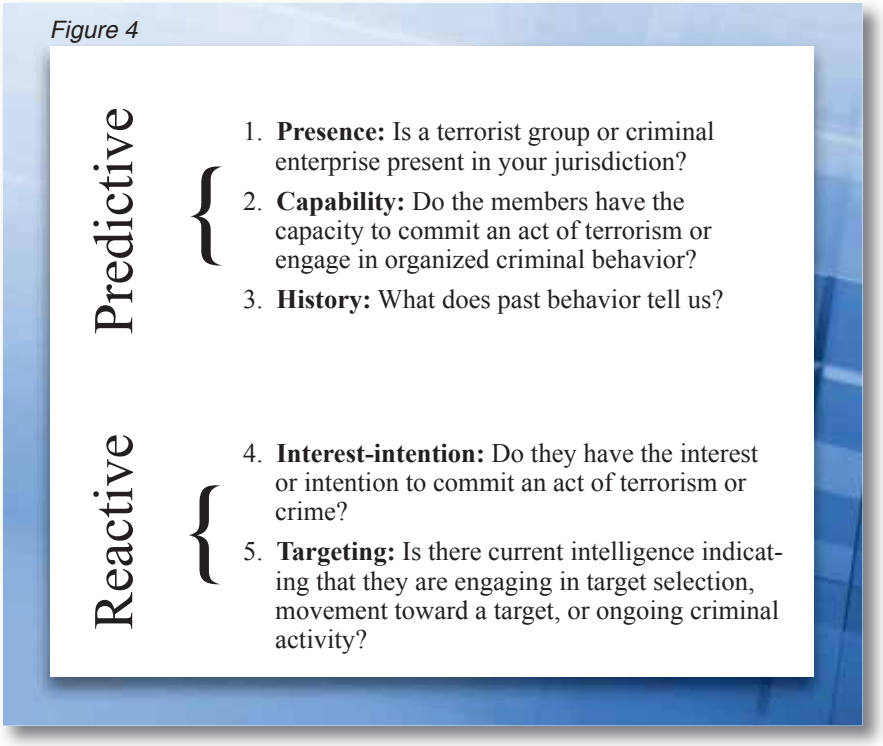
Deconstructing Threats

After a criminal or terrorist incident, investigators can gather lessons learned from the event though a process called "deconstruction," which provides another preventative technique for investigators to amass intelligence about a threat. Many patrol officers carry out this process intuitively, but applying it logically gives them a sense of how they can discover new indicators and warnings.

Deconstructing criminality or terrorism involves working backward to identify the indicative behaviors or actions that preceded the event. For example, if terrorists want to execute a truck bombing using ammonium nitrate/fuel oil of a building in a major city, they must take certain prior steps in a specific sequence (figure 2). As the diagram illustrates, terrorists cannot detonate an explosive device without first acquiring and assembling the needed components. Each of these actions also may link to its own precursor events that investigators can identify through further deconstruction. Some actions are specific, while others apply to multiple events (figure 3).

Law enforcement personnel can use deconstruction to analyze precursor events at a deeper level and pinpoint new indicators and warnings. This framework allows investigators to reexamine behaviors, place them in a logical construct for informed speculation, and articulate why they may be suspicious. Also, deconstruction encourages officers to view intelligence gathering as a prevention technique, which facilitates earlier interventions of criminal and terrorist threats.

Figure 4



Examining Past Performance

Though criminal techniques evolve, past behavior remains a reliable predictor of future actions. Many terrorist acts show the hallmarks of a particular group because even when tactics progress, often, some historical behaviors endure. These patterns provide a starting point and direction for analysis. Many terrorist and criminal groups, like other enterprises, repeatedly use their tried-and-true tactics until they no longer are effective. When investigators recognize clues from these past behaviors, their investigation likely will proceed down the correct path.

Linking Indicators and Warnings

Indicators and warnings prove most useful for intelligence collection when they contribute to a threat assessment. A threat is a potential for harm, while a threat assessment measures the likelihood of that harm occurring. The threat assessment model

Figure 5

Components of a Threat Assessment

Presence may be measured by:

- local criminal activity committed by a particular group or its members;
- literature that supports the group's agenda;
- public demonstrations held by the group;
- media releases or other public statements made by the group; and
- information from other law enforcement sources indicating presence.

Capability may be measured by:

- membership growth rates;
- ability to raise funds or access money;
- training activities;
- intelligence or information gathering efforts by the group;
- ability to access weapons or explosives; and
- information from other law enforcement sources indicating capability.

History may be measured by:

- evidence of past criminal activity or acts of terrorism, and
- historical information or intelligence indicating presence,
- capability,
- intent, and
- targeting.

Interest-intention may be measured by:

- plans and preparation for an act of terrorism or organized criminal activity;
- history of criminal activity;
- history of antigovernment rhetoric;
- association with antigovernment or terrorist groups;
- violent ideology; and
- information from other law enforcement sources indicating interest or intention.

Targeting may be measured by:

- scope of target selection;
- intelligence and surveillance of potential targets;
- specific target selection;
- preattack surveillance and planning;
- attack rehearsal; and
- operational movement toward the target.

includes five components: presence, capability, history, intention, and targeting (figure 4). The first three are predictive (observable statically), while the last two are reactive (require action). The intention to harm is the most critical factor of the five.

Intention also is the least tangible because it represents thoughts and motivations. However, once subjects develop firm intentions, they quickly may acquire the means to act because capability may require nothing more than picking up a gun.

Developing a Threat Assessment

To assess a threat, investigators measure the five components through both inference and intelligence. At times, a threat assessment raises more questions than answers. By identifying these questions, or

unknowns, investigators can determine intelligence gaps and establish collection requirements to fill them. Also, law enforcement personnel can develop even deeper intelligence by deconstructing each component of the threat assessment to identify additional indicators and warnings for each (figure 5).

Conclusion

Anticipating criminal or terrorist events is not an exact science, and even the most skilled experts can draw incorrect conclusions. The value of good judgment, common sense, experience, and collaboration cannot be overstated for this process. Analysts and investigators should partner to develop sound threat assessments because analysts supply the rigor of science and empiricism, while officers bring intuition and experience.

By analyzing the five components of a threat assessment, officers and analysts can identify and deconstruct indicators and warnings for each, revealing deeper levels of intelligence. Further, deconstruction allows the officer or analyst to develop a logical framework to identify new indicators and warnings as they emerge.

The threat assessment model, enriched by these processes, provides superior insights. When developed effectively, a threat assessment supports empirical judgments about when to intervene, admonish, or arrest a suspect. The model helps law enforcement professionals pursue the correct investigative path and prosecutorial strategy. When investigators employ these methodologies effectively, they can decrease the possibility of surprise, prevent crimes more frequently, and enhance public safety.✦

Clarification

The editorial staff would like to make a clarification to the Crimes Against Children Spotlight, "The Neighborhood Canvass and Child Abduction Investigations," which appeared in the February 2012 issue. The first sentence of the article more accurately should have read, "In 76 percent of child abduction murders, the victim was killed within 3 hours of the reported abduction, and in 89 percent of child abduction murders, the victim was killed within 24 hours." The online version of the article at the FBI Web site, *http://www.fbi.gov* already has been revised.

Focus on Searches

Characteristics and Implications of Diversion Safes

By Megan C. Bolduc, M.A., M.S.

During investigations and other daily operations, law enforcement personnel frequently conduct extensive searches of individuals' residences, offices, and other personal spaces when authorized by law. As a result, criminals strive to conceal illegal items in case of such a search, and they may hide this material inside containers known as "diversion safes."

Manufacturers advertise diversion safes for their legal purpose—as a way to protect one's valuables. However, diversion safes disguised as common household items also can provide criminals a convenient hiding place for incriminating items, such as narcotics, weapons, and cash. The Naval Criminal Investigative Service (NCIS) first reported on diversion safes in 1997, and the product lines have expanded even further since that time.

Law enforcement personnel must remain aware of the variety of safes available and the wide array of Internet and retail stores that sell them. This knowledge can help investigators identify the containers and, thus, discover illegal material that otherwise might have passed undetected through a routine search. Law enforcement personnel must become educated about the popularity of this diversion technique, the types and characteristics of available products, and the possible impact on officers' efforts.

Availability

Diversion safe product lines have expanded significantly in recent years, and the number of Internet and retail outlets that sell these products also has increased. Both of these factors make it easier than ever for individuals to purchase the safes and, potentially, thwart investigations. Diversion safes are widely available from popular online retailers and in local home goods stores. They also are affordable, with prices ranging from just a few dollars up to $40.

Characteristics

Many diversion safes can appear as common household items. For example, weapons can be hidden in mantle clocks, drugs can be stowed cleverly in what appears to be a soda bottle, and money can fit inside of all sorts of canisters. Because these items are not common hiding places that officers search routinely, the illicit materials inside the safes may remain undetected.

> **"…diversion safes disguised as common household items also can provide criminals a convenient hiding place for incriminating items, such as narcotics, weapons, and cash."**

Such safes are crafted to look and feel exactly like the products that they mimic. They also are weighted to feel like a normal object, so even if officers hold a safe, they will not discover the contents inside unless they examine the item closely and remove the top or bottom. Diversion safes come in many shapes and sizes and may be disguised as personal care products, household items, food, or beverages.

Many safes are exact replicas of the items they mimic because they are remanufactured from the original containers. For example, a soda can safe may be advertised as a realistic replica that feels full of liquid, does not open accidentally, and has a top that must be screwed on and off to access the inside. A water bottle safe may include real water, with the bottom filled with liquid and with a hidden area behind the label. Candle diversion safes may function as real candles and burn for up to 4 hours, which largely decreases suspicion of the item's actual purpose.

Legitimate Functions

Any individual could purchase a diversion safe for a legitimate purpose (e.g., to thwart potential thieves and conceal valuable possessions). As such, most safe manufacturers advertise their products as a repository for legal materials, such as jewelry or cash. Manufacturers named these containers diversion safes for this reason—they divert the attention of thieves and allow individuals to hide their valuables in plain sight. Manufacturers promote the safes' effectiveness in preventing theft because criminals often are in a hurry and, therefore, likely will grab only the most visible valuables. Product descriptions may claim the containers hide anything the owner does not want found in the home, office, car, or dorm.

Nefarious Use

While diversion safes can serve a legitimate purpose for many customers, they also may attract the attention of criminals. Just as these products can fool thieves, they can divert police officers during a search, and dangerous items easily can be concealed in these containers. Because the manufacturers advertise that these products can hold anything people need to conceal, this suggests they can hide items, such as weapons and illegal narcotics, that if discovered would incriminate criminals.

Drugs are popular items to hide. To this end, retailers may advertise the safes as a place to conceal legally prescribed drugs from thieves. While such advertisements may not discuss criminal activity, a product advertised as a discreet repository for drugs may garner interest from illegal narcotics users.

Manufacturers have created diversion safes to hide pills in small items, such as skateboard wheels, car cigarette lighters, and batteries. A pen diversion safe, available for only a few dollars, can hide money and prescription drugs discreetly while working as a fully functional pen. When the top unscrews, the pen reveals a hidden compartment and removable vial.

The illicit functions of diversion safes became more publicized in 2007 when a professional football player was suspected of attempting to smuggle marijuana through airport security. He arrived at the airport carrying a 20-ounce water bottle, which security personnel told him he could not carry to his gate. When Transportation Security Administration (TSA) screeners inspected the bottle more closely, they discovered that it actually was a diversion safe with a hidden compartment containing what apparently was marijuana. The compartment remained hidden by the bottle's label so that it appeared to be a full bottle of water when held upright.[1]

Concealment in Vehicles

Diversion safes in vehicles pose additional risks for law enforcement. Because officers commonly discover incriminating items during roadside searches, many individuals hide drugs and other illegal items in their cars. To this end, diversion safes have become a popular method of concealment.

Many companies sell containers specifically created for vehicles, such as a safe that resembles a can of tire sealant or a thermal coffee mug. Because drivers commonly keep such products in a car, they do not draw officers' attention during a search. These safes make it easier for criminals to transport illegal items in their vehicles without suspicion.

Implications for Law Enforcement

Many law enforcement duties involve searches of homes, offices, and vehicles. Diversion safes

present an attractive option for criminals to keep their illegal items out of an officer's sight, even during a search. Therefore, these safes can cause serious problems for law enforcement personnel if potential evidence remains concealed in what appear to be ordinary objects.

Diversion safes' rising popularity and availability should cause officers even greater concern and motivate them to take extra care when they search suspects' personal property. The fact that these safes look and feel exactly like the items they mimic, even if examined, makes them especially difficult for officers to spot. As such, officers may need to spend additional time when conducting searches to ensure that they thoroughly inspect all possible hiding places.

"Diversion safes' rising popularity and availability should cause officers even greater concern and motivate them to take extra care when they search suspects' personal property."

Because safe manufacturers advertise their products as a theft-prevention method, marketing materials may claim that law enforcement personnel endorse the products. They might even advertise that officers encourage homeowners to buy the safes.

Homemade Versions

Many Web sites post written instructions and videos to teach users how to make secret compartments out of household items, such as decks of cards, CD cases, mp3 players, and travel coffee cups. These instructional materials increase the availability and accessibility of safes, especially for juveniles. If individuals can make their own safes, they no longer have to spend money to purchase them or wait for them to be delivered. Such how-to videos teach criminals to cheaply and effectively hide items that may be of interest to law enforcement, particularly if they expect to undergo a search of their belongings and property.

Parental Concerns

Diversion safes also may attract juveniles who want to hide illegal items from their parents. To combat this, the Prevent Delinquency Project teaches parents strategies to spot diversion safes in their homes.[2] The Web site informs parents about popular concealment tactics, such as the use of hollowed-out books, soda cans, and deodorant containers with secret compartments or false bottoms. Also, it warns that more recently, acquiring such items has become even easier for juveniles.[3]

The site provides valuable information on trends and news related to diversion safes to help educate parents; this same information can prove useful for law enforcement personnel. For example, the site discusses "stash" water bottles sold on the Internet and warns that parents often overlook them because the top and bottom sections of the bottles contain water. If parents and law enforcement personnel are aware of these creative tactics, they more successfully can prevent children from possessing dangerous items.

Conclusion

Undoubtedly, many people desire to conceal their possessions for any number of reasons. These instances can include teenagers hiding alcohol from their parents, homeowners safeguarding jewelry from potential thieves, or drug users storing marijuana in their vehicles. Diversion safes provide an attractive method of concealment for all of these groups. As such, the potential for the use of the safes is high. The vast array of companies and stores that offer these products, in addition to the large quantity and variety of safes available, demonstrates their popularity.

Despite their possible lawful functions, diversion safes in the hands of criminals can cause serious problems for law enforcement. Diversion safes can conceal contraband in homes, offices, vehicles, luggage, and other areas subject to search. If officers are not aware of these items, they may allow illicit materials to pass through a search undetected. Because these safes so closely resemble the items they mimic, officers must remain alert for common items that contain secret compartments. This may require longer and more comprehensive searches to ensure the officers examine all potential hiding places. Through increased awareness of this diversion technique, officers can identify criminal activity and uncover items of evidentiary value.✦

Endnotes

[1] B.N. Sullivan, "NFL Quarterback's Fake Water Bottle Intercepted at MIA," *http://aircrewbuzz.com/2007/01/nfl-quarterbacks-fake-water-bottle.html* (accessed December 1, 2010).

[2] *http://www.preventdelinquency.org* (accessed February 14, 2012).

[3] *http://www.preventdelinquency.org/child-threat-drugs.php* (accessed December 14, 2010).

Questions, comments, or requests for additional information may be directed to the U.S. Naval Criminal Investigative Service's Criminal Operations and Investigations Support Division at MTACCrim@ncis.navy.mil.

Ms. Bolduc currently serves as a supervisory intelligence specialist with the U.S. Naval Criminal Investigative Service's Criminal Operations and Investigations Support Division.

Wanted: Bulletin Honors

The *FBI Law Enforcement Bulletin* seeks submissions from agencies that wish to have their memorials featured in the magazine's Bulletin Honors department. Needed materials include a short description, a photograph, and an endorsement from the agency's ranking officer. Submissions can be e-mailed to *leb@fbiacademy.edu* or mailed to Editor, *FBI Law Enforcement Bulletin,* FBI Academy, Quantico, VA 22135.

Be of Consequence

Being a man or a woman is a matter of birth. Being a man or a woman who makes a difference is a matter of choice.

—Byron Garrett

An old friend from my days conducting investigations stopped by the office recently. We began reminiscing about the old times and catching up on where many of our friends and coworkers are today. He then asked, "Whatever happened to Ground Hog?"

Ground Hog was one of those bosses whom we refer to in the FBI's Leadership Institute as a Caretaker Leader. He worked hard and was a nice guy. He made sure the shrubs were pruned, the grass was cut, and the floors were swept. Yet, that was it—he was a maintainer. Ground Hog offered no new initiatives, no tweaking of existing programs, no apparent engagement in daily operations, and, most important, no drive and inspiration to make the organization or his people better. The staff secretly nicknamed him Ground Hog because they joked that he only came out of his office once a year.

It is interesting how we all share similar experiences. I was talking about this topic at lunch recently with a few members of our leadership faculty. One instructor offered that in one of his National Academy classes, a student spoke of how he and his colleagues called their boss Casper. Another said that someone in one of his classes described a similar supervisor as the Loch Ness Monster—his existence was said to be mostly folklore with only a few grainy pictures as evidence.

Despite being a likeable guy and a hard worker, Ground Hog was ineffective because of one fatal flaw—he was inconsequential. I do not use that word lightly. Sure, there are plenty of words no leader wants to hear, such as incompetent, dishonest, or uncaring. But, even the most capable, honorable, and compassionate leaders are ineffective if they neglect to be of consequence.

Do not be Casper, the Loch Ness Monster, or Ground Hog. Commit every day to challenging the status quo. Push yourself and others to new heights. Strive for a better future for your community. Today, resolve to make a significant difference with your organization and your people.✦

Dr. Jeff Green, chief of Faculty Affairs and Development at the FBI Academy, prepared this Leadership Spotlight.

Changing Police Subculture

By Mark Malmin

No societal institution so critically links citizens to government like policing. This arm of government defends against anarchy and preserves the rules of law and due process in a democratic society. Policing as an institution reflects the health and viability of its social fabric. An organized, well-run, ethically just, and evenhanded police department tenaciously committed to excellence and the people it serves contributes significantly to a city well represented by its government.

Policing inherently offers law enforcement personnel the opportunity to either represent or misrepresent those values and ethics of democratic government. How society perceives law enforcement's performance serves as a barometer for a community's sense of peace and well-being.

When political turmoil, poverty, crime, and social injustice lead to civil unrest that challenges the very pillars of democracy, society asks the police to intervene to restore order, protect lives, and safeguard property. No other profession requires its employees to make complex legal and moral decisions that impact the lives of others quite like policing. Officers must chase criminals;

expose themselves repeatedly to danger; and show compassion, kindness, courtesy, and respect to citizens. Yet, at the same time, they must possess the capacity to lawfully take someone's life under the most stressful conditions, often in a split-second decision. For these reasons and many more, policing is a special profession.

As a result of the difficult and often dangerous duties that police work involves, the occupational stress that officers face is cumulatively debilitating and consuming. Yet, sometimes, law enforcement agencies offer only limited resources to help officers deal with this trauma. Worse still, these organizations typically exhibit a firmly engrained policing subculture that dismisses the need for such assistance. An agency always should consider personnel its most valuable resource; as such, officers deserve all the support and assistance the agency can give them to maintain their health and wellness.

As police officers and their unions negotiate with governments for wages, benefits, and working conditions, both sides must cooperate and collaborate to effectively manage with diminished financial means this precious human resource. Both sides need to focus on their common values and mutual concerns, and those should include more than just officers' survival—they should extend to wellness.

Generally, police officers in the United States are well trained; in most instances, they receive the best training in the world, especially for tactical and operational skills. However, many law enforcement organizations struggle to understand fully how trauma and stress impact human beings, and, therefore, they fail to train their officers in this area.

Greater attention must be paid to the various causes and impacts of occupational stress and mental anguish among officers, as well as how these relate to the law enforcement subculture. Once agency leaders understand and acknowledge this subculture and its repercussions, they can implement strategies to change it, thereby improving the health and vitality of their workforce.

LAW ENFORCEMENT SUBCULTURE

Law enforcement's common but dangerous subculture poses one of the most significant risks to the health and wellness of its personnel. This subculture leads officers to feel that they need to act as though they can handle anything; it emphasizes individual strength and independence, which encourages personnel to maintain a façade of invincibility.[1] Out of fear that they will appear weak, police officers generally do not encourage each other to talk about their problems. They may cry at the funerals of their fallen warriors, but they usually avoid talking about their deepest wounds or fears. Law enforcement personnel

"Law enforcement's… subculture poses one of the most significant risks to the health and wellness of its personnel."

Mr. Malmin retired from the Palo Alto Police Department and the San Mateo County Sherriff's Office, both in California.

represent the "good guys," yet many officers seem to forget or ignore their own humanity.

This subculture results in a police force that struggles to show weakness (to each other and to themselves). Further, some departments may not pay enough attention to their people. However, such oversight is a bilateral phenomenon, and management and officers share responsibility. Administrators and line personnel jointly contribute to their institution's subculture, and either side can act as enablers.

This occupational mind-set deeply permeates law enforcement organizations from the top of the management hierarchy down to the newest recruits. Both officers and administrators need to reexamine this issue. If today's law enforcement professionals do not challenge this subculture, it simply will pass down to the next generation of officers who follow in their footsteps.

New Recruits

Officers become indoctrinated into this subculture and the accompanying mind-set early in their careers, usually during the field training program that they begin immediately after graduating from the police academy. The training that recruits obtain in the academy differs from what they experience during field training. Now, instead of remaining inside a classroom or firing range, they are on the streets, learning to become competent, independent officers.

Recruits receive instruction not from classroom instructors but from the experienced officers (known as field training officers, or FTOs) who accompany them on their shifts. FTOs provide on-the-job instruction and observe new officers as they attempt to fully master policing skills. Sometimes, FTOs tell recruits that they should forget everything they learned in the academy because their FTO will teach them about "real" police work—including the subculture.

> ***Law enforcement personnel represent the 'good guys,' yet many officers seem to forget or ignore their own humanity.***

An inherently stressful experience, typical field training programs include back-to-back shifts of "in-your-face" police work to prepare recruits for the daily realities of the law enforcement profession. As a result, some new officers display physiological symptoms of anxiety, such as stomachaches, headaches, or trouble sleeping. Daily evaluations cause enormous stress as does the knowledge that certain errors (especially those related to officer safety) will cause them to fail out of the program. The recruit's career then hangs in the balance.

During this training, personnel receive their first real exposure to the traumatic events of police work. Even if academy instructors emphasize to students that they will witness more sorrow, death, mayhem, and horror in 6 months than many people see in a lifetime, nothing will prepare them for the first time they find a body hanging from a rope—nothing will erase the image of that event from their minds. Recruits likely will say that they can handle it, but not acknowledge their true inner feelings, consternation, or turmoil.

Many recruits have confided to other officers that at some point in their field training program, they almost lost the ability to care about what would happen that day even if they failed the training—they just wanted it to end. While they hoped they could make it through, they admitted reaching a point when they hardly could take the stress anymore.

To mitigate the risk that officers burn out during this

program, FTOs need to bring appropriate expectations and attitudes to their instruction. Trainers should fairly assess recruits' overall performance, ability to make decisions under stress, awareness of officer safety, use of appropriate levels of force, soundness of judgment, and all of the other skills that policing demands. But, realistically, they should not expect more of the recruits than they would from a 10-year SWAT team veteran.

Experienced Officers

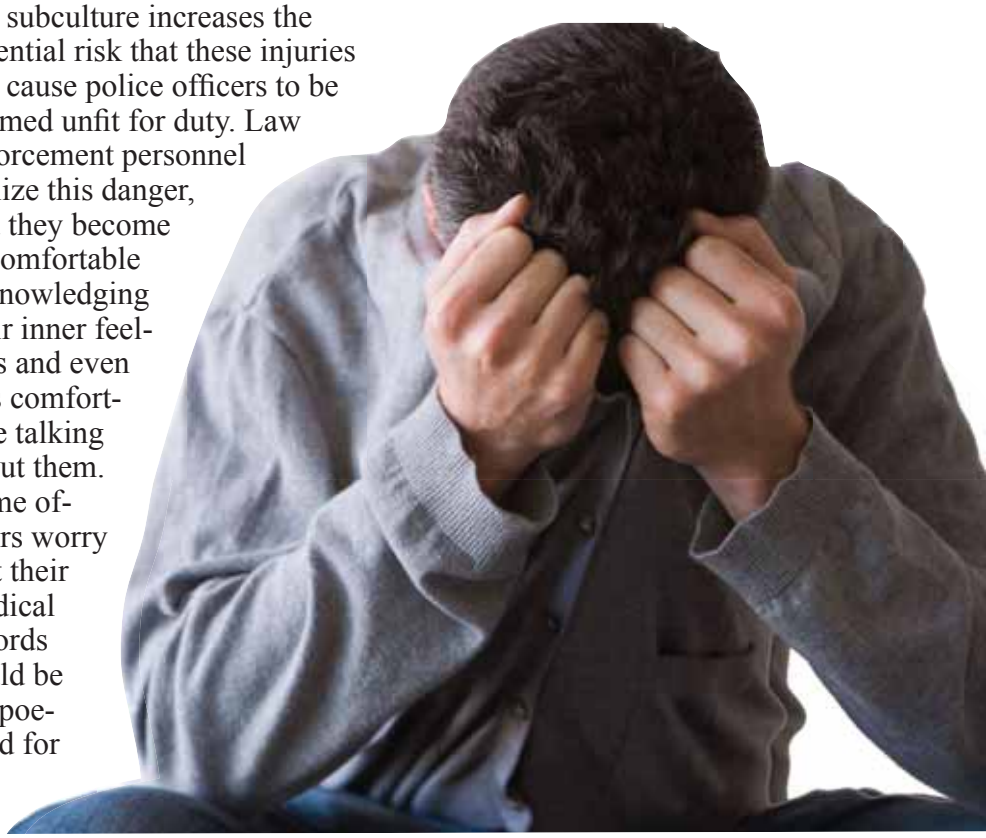
Once personnel pass through their field training program and probationary period successfully, they become further inculcated in the policing subculture, which then defines them as part of an elite group. Veteran officers may communicate to them that "Now you are one of us, and precious few can make it." Officers internalize this attitude long into their careers, and it may lead them to conceal or ignore their inner pain or feelings.

Law enforcement officers may not know how to deal with emotional pain, like a wounded psyche or a broken heart. Worse yet, their peers and superiors might not consider these injuries legitimate. Additionally, many law enforcement personnel feel that they cannot openly identify or discuss their personal pathology with mental health counselors who never have experienced police work.[2]

First demonstrated by FTOs and later by other colleagues, the police subculture leads officers to fear that expressing any emotional or mental turmoil will label them as weak. This toxic environment inhibits wellness training and therapeutic intervention despite officers' routine exposure to debilitating, traumatic incidents of stress. It promotes secrecy, distrust, and duplicity. In the long run, the toll of this culture—on both personnel and the organization—becomes substantial.

Additionally, this dangerous subculture increases the potential risk that these injuries can cause police officers to be deemed unfit for duty. Law enforcement personnel realize this danger, and they become uncomfortable acknowledging their inner feelings and even less comfortable talking about them. Some officers worry that their medical records could be subpoenaed for criminal or civil court proceedings and that any examples of psychological problems could jeopardize a case. This can lead them to refuse to seek help for their emotional issues, even if they begin to contemplate suicide.[3]

The police subculture repeatedly is reinforced to personnel during their most vulnerable times. For example, if a new officer appears distraught after dealing with a violent child abuse case, a peer may enforce the attitudes of the subculture by sarcastically mocking the officer and asking if he or she



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needs a tissue to wipe away tears. This perverse humor, which serves as a vehicle for negativity, can persist.

The costs of avoiding, ignoring, or burying the emotional aftermath of traumatic events can lead to serious short-term and long-term consequences. Officers' unresolved trauma and pain can lead to depression, anxiety, aggression, and reliance on self-destructive coping mechanisms, such as heavy drinking and other substance abuse. A lack of wellness among officers can drive increases in sick leave usage, insubordination, suicides, lawsuits, and citizen complaints, just to name a few potential consequences. Research studies support these conclusions.[4]

STRATEGIES FOR CHANGE

Undoubtedly, there are many reasons why this subculture continues to flourish despite its pernicious impact on the lives of officers. Most law enforcement personnel likely would agree that they need to show more humanity to themselves and to their peers if they want to achieve a higher level of wellness and job satisfaction. However, most police administrators grew up within the ranks of their own organizations and are products of their environments; as such, they are engrained with the same mind-set that perpetuates some of the subculture.

Law enforcement leaders must set the example for their subordinates by first changing their own beliefs and priorities regarding officer health and wellness. But, a change in attitude among administrators will not suffice. Supervisors cannot just casually ask their subordinates in the hallway if they feel okay and then be satisfied with the perfunctory answers that will follow. Can supervisors realistically expect SWAT team members to admit when they feel traumatized and risk insinuating that they cannot handle this sought-after, prestigious, demanding position?

> ***…courageous administrators must act as leaders to expose problems, establish new policies to remedy them, and promote an agency culture that embraces holistic wellness.***

To break this cycle, administrators must implement departmentwide policies that force the culture to change. Personnel must have easy access to wellness resources, but, more important, the attitudes surrounding these programs need to improve. Officers must not fear they will be punished or denied their next promotion if they receive therapeutic counseling or assistance after a traumatic incident.[5] Most law enforcement personnel never would forget to debrief each other on tactical matters after a crime, but they often fail to pay attention to other officers' emotional needs following a particularly difficult case. Personnel should not have to search for such services—they should be part of standard operating procedure or policy.

Further, concerns for officer wellness cannot remain confined to occupational stress. An officer struggling through an ugly, prolonged, or pending divorce may feel as stressed as an officer involved in a shooting. The pain officers feel and their reactions to that stress are not always apparent.

My personal experience aptly demonstrates this issue. I had an exciting and rewarding 28-year career in law enforcement as an officer, detective, and hostage negotiator. I became a police officer for the adventure and challenge that came with the responsibility of handling life-and-death crises. Yet, when I had to deal with my own divorce, I became deeply distraught.

To facilitate my recovery, I took advantage of my peer support system and inner circle of trustworthy friends. This allowed some of my bottled-up pain to dissipate. I also sought professional counseling, which benefitted me tremendously. Additionally, spirituality helped me recover in a positive, realistic, and constructive way so that I could stop "beating myself up" about my perceived culpability and failure.

Unfortunately, sometimes the police subculture prevents personnel from seeking these necessary resources to cope with their struggles. Officers feel that they should be tough, overcoming warriors and that they should simply deal with their pain—all alone. Nothing could be further from the truth, and officers do not need to suffer alone. Instead, officers need to treat themselves with greater humanity and stop perpetuating this subculture.

To change this oppressive subculture, both officers and administrators need to acknowledge and expose the problem.[6] Then, officers could be more honest with themselves and others about their pain and discomfort; this would allow personnel to examine, rather than suppress, their feelings.

Once administrators facilitate these changes in procedures and attitudes, officers should seek out support systems and available resources, rather than hesitate to take advantage of them. In my case, peer support, professional counseling, and spirituality all served as resources. Law enforcement personnel must remember that wellness relates less to the availability of these programs and more to the use of them. Strong men and women admit when they need help; if officers refuse to do this, wellness resources will remain underused, and a cultural shift never will occur.

CONCLUSION

Common knowledge should dictate that as humans, police officers cannot remain immune from the emotional and mental repercussions of exposure to traumatic events. Officers are trained to offer help, encouragement, and professional resources to victims of horrific trauma, yet they sometimes cheat themselves out of the same assistance. Currently, both officers and administrators too readily accept this subculture as an unchangeable aspect of the occupation. Law enforcement personnel do not have to tolerate this subculture. But, for significant changes to occur, courageous administrators must act as leaders to expose problems, establish new policies to remedy them, and promote an agency culture that embraces holistic wellness.

Officers should feel proud of the policing profession. Those who serve in this occupation are wonderful people who deserve more. Officers still can be as tough as nails yet also show compassion, tenderness, and humanity—to themselves and to each other—and live a healthy life.✦

Endnotes

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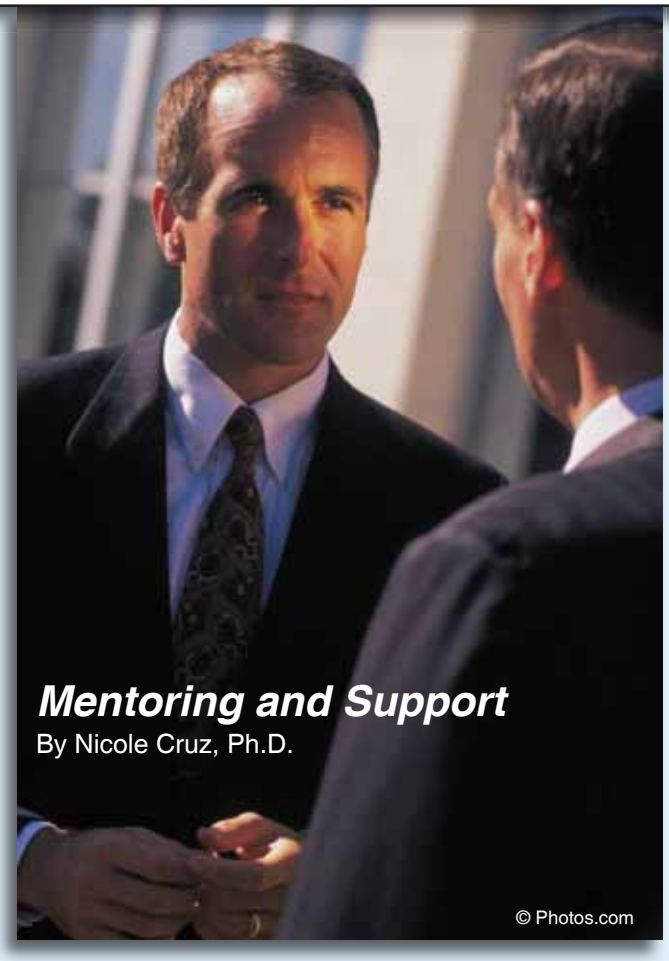
The author welcomes further questions and discussions through his Web site, www.markmalmin.com *and via e-mail at* mbmalmin@comcast.net.

Safeguard Spotlight



Mentoring and Support

By Nicole Cruz, Ph.D.

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Peer support—it sounds so cold and clinical. What does it actually mean, and how can it make a positive difference in personal circumstances? People working cases involving toxic images, such as those pertaining to child pornography, often provide informal peer support without realizing it. When many such persons first view a particularly disturbing image or video, they have a "normal," or "disgust," response, which may range from feeling anger to having thoughts, like "Just when I thought I saw it all...." I ask these individuals how they responded to having feelings of disgust. Many reply "I talked with some of the people on my squad." That is peer support.

People conducting these investigations often tell me that they do not want to talk to their spouses, friends, or other personal contacts about the details of their work, typically adding "And they really don't want to know about it, either." Therefore, the social world for persons exposed to child pornography may become somewhat stratified into those who have seen these images and those who have not. Persons who have had exposure to them have learned how to compartmentalize these toxic materials by using their own experiences and worldviews as the toxin filter. Often, it is a relief to hear comforting words from such peers: "Yeah, I responded that way, too. That's normal."

I am not sure if people working these cases know that they have the power to provide support to their coworkers simply by making themselves available to talk, listen, and normalize others' responses. Or, if unsure how to help, they can recommend that their peers call someone from the FBI's Undercover Safeguard Unit (USU) to discuss their symptoms and receive needed support.

I want to encourage those of you who support others in this regard or desire to do so. Every week, I hear about how you successfully have helped people cope with such exposure. To this end, a formalized peer support model could assist you in getting new persons working these toxic cases to become well-acclimated.

1) Designate squad mentors for new hires.
2) Sit with new members during first exposures—sanitized and less disturbing images (e.g., those involving older victims, nonviolent cases) prove most suitable. Afterward, ask them if they had any thoughts, feelings, or physical responses to the viewings. Normalize their reactions; if unsure of the normality of their responses, refer them to USU or an employee assistance unit (EAU) for clarification.
3) Respect their privacy. Confidentiality is crucial. As a rule, do not discuss persons' responses with others. If they have an extreme reaction—very rare—share with

them the need to speak with a mental health professional (e.g., USU or EAU).

4) Let new hires inform you when they feel ready to view images alone.

5) Allow for viewing of pictures before watching videos (muted sound if possible). Sit with new members during first exposures to videos.

6) Educate new peers about the ability to slowly acquire a coping style (e.g., desensitization) to enable them to continue doing this work. Let them know that developing an effective coping style can take up to about 6 months.

7) Educate new members regarding the need for ongoing support when they see particularly disturbing images and videos.

8) Listening and acknowledging discomfort can prove effective in making new hires feel supported. Do not hesitate to refer them to USU or EAU if appropriate.

Simply formalizing what many squads already do informally can help set up more resources for people exposed to child pornography. Additional support for such persons can make significant contributions to their wellness as they work these challenging crimes.✦

Dr. Nicole Cruz, formerly of the FBI's Undercover Safeguard Unit (USU), prepared this Safeguard Spotlight. USU provides guidance and support for personnel exposed to child pornography and child exploitation materials. The unit can be contacted at 202-324-3000.

Bulletin Report

Alternatives to Highway Flares

The National Institute of Justice (NIJ) funded a study that assessed alternative highway flares that use chemical or electric sources of energy, thus reducing the risks posed by traditional flares. The magnesium-based highway flares traditionally used by law enforcement can create risks for officers and the surrounding area. These flares burn at high temperatures for 15 to 30 minutes, creating smoke and fumes that can overwhelm the user. Afterward, personnel must dispose of the hot, melted remains.

"Most agencies do not have policies about the disposal of flares," said Charlie Mesloh, director of the Weapons and Equipment Research Institute at Florida Gulf Coast University. "It's completely discretionary." With funding from NIJ, Mesloh and his colleagues conducted research into alternative flares and found that the chemical and electric ones tested were less visible than the traditional flares when placed at ground level. However, when the researchers lifted them off the ground, even by just a few inches, visibility increased by a quarter of a mile. When placed on a cone, the alternative flares were visible at 1 mile or more. In addition, the researchers found that basic, uncomplicated designs for cones and flares were most effective and visible. Arrangements using multiple flare types disoriented and confused other drivers.

To obtain the report *Evaluation of Chemical and Electric Flares*, pertaining to this study, access *http://www.ncjrs.gov/pdffiles1/nij/grants/224277.pdf*.

ViCAP Alert

Attention

Violent Crime, Cold Case, and Crime Analysis Units

Rose Marie Bly

Missing since 08/21/2009 from St. Croix Falls, Wisconsin

Race: White
Sex: Female
Age: 21
Height: 5'0"
Weight: 110 lbs.
Hair Color: Brown
Eyes: Brown
Hair Style: Varied
Tattoo: Two red cherries, right ankle
Piercings: Ears, navel

Bly last was seen leaving her residence in St. Croix Falls, Wisconsin, en route to Cushing, a distance of 5 miles. Her car was recovered 5 days later in Grantsburg, Wisconsin, in a parking lot typically used by truck drivers to park their tractor trailers. This parking lot is approximately 30 miles from her residence.

To provide or request additional information, please contact Investigator Lisa Ditlefsen of the Polk County, Wisconsin, Sheriff's Office at 715-485-8362 or *lisad@co.polk.wi.us* or the FBI's Violent Criminal Apprehension Program (ViCAP) at 800-634-4097 or *vicap@leo.gov*. This and other ViCAP Alerts can be reviewed at *http://www.fbi.gov/wanted/vicap*. Contact ViCAP for information on how your agency can obtain access to the ViCAP Web National Crime Database and view this case.✦

Money Laundering and Asset Forfeiture

Taking the Profit Out of Crime

By DOUGLAS LEFF, J.D.

As all law enforcement officers quickly learn, most crimes have monetary gain as their motive. Investigators must begin the financial component of their investigations as early as practicable. When on the side of the officer, time can serve as a valuable ally.

This article explains modern means employed by criminals to launder the profits of their crimes, techniques investigators can use to locate and seize those proceeds, and legal issues associated with these efforts. Law enforcement officers can initiate most of these techniques during an investigation's covert stage.

MONEY LAUNDERING

Simply put, money laundering entails taking criminal profits and moving them in a prohibited manner.[1] Specifically, criminals or persons acting on their behalf generate proceeds in the form of money or property as a result of committing a crime designated as a specified unlawful activity (SUA).[2] Criminals then move that money, often with the intent to disguise the nature, location, source, ownership, or control of the funds, which is known as "concealment" money laundering.[3] Alternatively, in "promotion" money laundering, they reinvest the money in their criminal activities. Either theory suffices for a money laundering charge.[4]

Fortunately, most profit-based crimes are designated

as SUAs. Thus, the movement of any of those SUA proceeds either to conceal them or to promote the same or a different SUA will provide the foundation for a money laundering charge. Investigators do not need to prove that the money launderer knew of the specific SUA from which the proceeds were generated. Rather, all that need be proven is that the person laundering the money believed it was dirty. Often, this permits investigators to prove the knowledge element entirely through circumstantial evidence by showing that the launderer received or handled the money in a way different from an innocent money transfer.[5] Juries can relate well to this evidence.

In sum, the elements needed to prove a basic charge of money laundering under Title 18, Section 1956, U.S. Code are 1) SUA proceeds; 2) knowledge by the perpetrator that the profits resulted from some type of felony; and 3) a financial transaction intended to conceal the proceeds or to promote an SUA.[6]

International

Provided that subjects move the money to or from the United States to promote an SUA, investigators need not prove that the money is dirty. Even clean money sent internationally to promote an SUA will sufficiently support a charge of money laundering.[7] Thus, the only elements requiring proof include 1) the movement or attempted movement of funds; 2) to or from the United States; and 3) with the intent to promote an SUA.[8]

Reverse

Under the money laundering sting provision, money launderers can be charged as long as they believe they are moving SUA proceeds, even when the profits actually consist of case funds or other government property.[9] This opportunity regularly presents itself when undercover employees or confidential human sources in covert roles get introduced to money launderers. Similarly, an undercover officer or informant can represent themselves as seeking a professional money launderer. In either case, law enforcement can engage in a reverse money laundering transaction with these criminals who then can be charged with money laundering. Often, proceeding in this manner also will reveal the network of individuals and bank accounts involved in a professional money laundering network, thus leading to large-scale asset forfeiture.

The elements necessary for a charge of reverse money laundering include 1) transfer or attempted transfer; 2) of funds believed to be SUA profits; and 3) with intent to conceal the proceeds or promote an SUA.[10] The maximum sentence for violating Section 1956 is 20 years imprisonment.

"Unfortunately, asset forfeiture often is neglected or misunderstood, thereby allowing criminals to enjoy the fruits of their crimes even after conviction."

Assistant Special Agent in Charge Leff serves in the FBI's New York, NY, office.

Spending

In addition to the money laundering violations in Section 1956, a second, often-overlooked money laundering charge exists in Title 18, Section 1957, U.S. Code. Also known as the money spending statute, a 10-year maximum penalty exists for moving SUA proceeds in an amount greater than $10,000 into or through a financial institution. Two important facts about the money spending statute inure to the benefit of the investigator.

First, unlike the money laundering violations in Section 1956, investigators do not need to prove any intent by subjects to promote an SUA or conceal the proceeds thereof. The simple fact of the transaction is all that is required. For this reason, law enforcement should charge Section 1957 along with Section 1956 whenever ample proof supports both. A judge or jury disagreeing with proof of intent to conceal or promote would have to dismiss or acquit on that count of Section 1956 but still could convict on the corresponding Section 1957 charge. Section 1957 is not a lesser-included offense of Section 1956, so a jury can convict on both charges.[11]

Second, the broad definition of what constitutes a financial institution goes well beyond banks and credit unions. It includes most merchants, such as jewelry stores, car and boat dealerships, casinos, travel agencies, pawnbrokers, and many others, through which a criminal ordinarily would spend criminal proceeds.[12]

The elements required to charge a violation of Section 1957 are 1) transfer of SUA proceeds in a transaction over $10,000; 2) involving a financial institution; and 3) knowing that the proceeds are dirty.[13]

> ***Simply put, money laundering entails taking criminal profits and moving them in a prohibited manner.***

Conspiracy

Each act of money laundering must be charged as a separate offense.[14] To charge money laundering as a continuing course of conduct, it must be charged as a conspiracy.[15] Additionally, investigators are not required to prove that conspirators knew the precise SUA that generated the laundered proceeds but only that two or more criminals intended to launder dirty money.[16]

Venue for a money laundering conspiracy includes any district where the agreement to launder money took place or where any act occurred in furtherance of the conspiracy.[17] However, unlike most conspiracies, no overt act is necessary to charge a conspiracy to commit money laundering.[18]

ASSET FORFEITURE

Federal asset forfeiture laws permit the government to take title to money and property belonging to criminals based on proof often developed in conjunction with an overall investigation. Unfortunately, asset forfeiture often is neglected or misunderstood, thereby allowing criminals to enjoy the fruits of their crimes even after conviction. For this reason, the different types of asset forfeiture and the procedure for each are set forth here.[19]

Types

State and local law enforcement officers can benefit from federal asset forfeiture law through the adoption process whereby a federal law enforcement agency processes a seizure that state or local officers originally had made. This permits the state or local agency to make an equitable sharing request. Subject to U.S. Department of Justice (DOJ) approval, those agencies can receive up

Four Questions to Answer in Presenting a Viable Money Laundering Case

1) What is the transaction? An example must demonstrate the movement of money (e.g., between people, businesses, bank accounts).

2) Where does the money come from? Proof must identify through direct or circumstantial evidence the SUA from which the proceeds originated. While the type of SUA must be proven, the specific crime need not be. For example, cash spent by a drug dealer may be proven circumstantially as drug proceeds without having to demonstrate the particular drug transaction that produced them. This can be accomplished with evidence that the money launderer was a drug dealer and had no legitimate source of income.[44]

3) How did the money launderer know the money was dirty? The proof need only show that the money launderer knew it came from some kind of felony but not necessarily any particular SUA.

4) What was the subject trying to do with the money? This could be concealment of SUA proceeds, promotion of an SUA, or, as in the case of Title 18, Section 1957, U.S. Code, merely the movement of an amount over $10,000 into or through a financial institution.

Formulated by U.S. Attorney John Vaudreuil, Western District of Wisconsin, and featured in his training presentation "Investigative Techniques in Money Laundering Investigations" (given to law enforcement investigators and attended by the author).

to 80 percent of the net forfeiture to use for enumerated law enforcement purposes.[20]

Administrative

Many federal agencies have authority to forfeit certain types of lawfully seized property without court proceedings, provided the forfeiture is uncontested.[21] Any amount of cash can be forfeited administratively. Other personal property can be forfeited only if it is worth $500,000 or under unless it is a conveyance, such as a car, truck, or airplane, to traffic narcotics, in which case no limit on the value exists. Often, criminals will not contest an administrative forfeiture because of the requirement that they swear to their interest in the property under penalty of perjury. However, the agency must send notice within 60 days after seizure, or the administrative forfeiture is time barred.[22] If the notice results in the timely submission of a claim from the property's owner, the matter must be referred to the U.S. Attorney's Office for prosecution of a criminal or civil forfeiture, or the property must be returned.

Criminal

When a forfeiture allegation is added to an indictment or

information, only the interest of a convicted defendant can be forfeited and only if the individual is convicted of a qualifying violation. Thus, property belonging to uncharged third parties cannot be forfeited criminally. The forfeiture allegation is simple; the government need only advise the defendants that upon conviction of the charges in the referenced counts of the indictment, it will seek forfeiture as part of the sentence.[23] Specific property not named in the indictment or information can be listed in a bill of particulars and served on the defendants. However, if no forfeiture allegation is put into the indictment or information, the court will have no jurisdiction to enter an order of forfeiture.[24] Provided the forfeiture is properly alleged and the defendant is convicted by a jury on a charge for which forfeiture is permitted, either the defendant or the government can retain the jury to hear the matter. In this instance, the jury will hear any new evidence presented and then deliberate to decide the forfeiture.[25] Because forfeiture encompasses part of the sentencing phase, the government's burden of proof is only a preponderance of the evidence. And, criminal forfeiture is the

Common Misconceptions About Asset Forfeiture

1) *Property seized for evidence can be forfeited automatically*. This common error results in many missed opportunities for forfeiture. Each type of forfeiture contains strict time limits. Once missed, the government cannot commence forfeiture under the time-barred provision. For this reason, it is critical for an investigator to consult with asset forfeiture personnel upon seizing any item that they do not wish to return at the conclusion of the case to the person from whom it was seized.

2) *All property owned by a criminal is subject to forfeiture*. On the contrary, asset forfeiture authority originates purely from statute. While numerous federal laws provide for forfeiture, there also are some crimes that do not have a corresponding forfeiture statute. Other offenses have only limited forfeiture provisions.[45]

3) *Asset forfeiture and restitution are mutually exclusive*. Asset forfeiture relates to the amount of proceeds generated by a crime and in some cases the actual property used to commit an offense, while restitution relates to the amount of losses caused by a crime. By statute, judges must order both where applicable.[46] Investigators have two main benefits in achieving criminal asset forfeiture. One, no time limit exists for amending an order of forfeiture; subsequently acquired property of the defendant found years later still can be forfeited. Two, the discovery provisions for enforcing an order of forfeiture are much easier to use than those available to enforce an order of restitution, which basically involves filing a separate lawsuit under the Federal Debt Collections Act.[47]

only means through which the government can get a forfeiture money judgment, a finding by the court or jury as to the total dollar amount of proceeds generated by the defendants' crimes. Upon entry of an order of forfeiture containing a money judgment, the government then may execute on any property traceable to the defendants even if the proceeds are unrelated to the crimes for which the defendants were convicted.[26] This type of property is known as a substitute asset. Title 18, Section 982, U.S. Code is the general statute referencing crimes for which criminal forfeiture is available.[27]

Civil

Regardless of whether there is a criminal conviction, a civil forfeiture complaint can be filed against any specific property, real or personal, subject to forfeiture based on the underlying criminal activity.[28] Anyone with an ownership interest in the property can challenge the civil forfeiture by filing a notice of claim followed by an answer to the complaint. Either the government or a claimant can demand a jury.[29] The government has the burden of proving the forfeitability of each property by a preponderance of the evidence. Once satisfied, all interests in the property are forfeited unless claimants can prove by a preponderance of the evidence that they were innocent owners.[30] To prevail on this defense, claimants who owned the property during the time period alleged in the complaint must prove that they either had no knowledge of the conduct giving rise to the forfeiture or that they took all reasonable steps to terminate the illegal conduct.[31] Claimants who took title to the property after the criminal activity occurred must prove that they were bona fide purchasers for value without knowledge of the prior criminal activity.[32] One of the main concerns of bringing a civil forfeiture action is the broad discovery involved, which far exceeds the boundaries of criminal discovery.[33] For this reason, the government routinely makes motions to stay a civil forfeiture where the discovery likely will adversely affect a related pending criminal case.[34] Title 18, Section 981, U.S. Code is the general statute referencing crimes for which civil forfeiture is available.

> ***The 21st Century has ushered in a wave of technologically savvy professional money launderers.***

Theories

Proceeds

Most federal crimes giving rise to forfeiture do so under the proceeds theory, whereby any money or property directly or indirectly traceable to the underlying crime is subject to forfeiture. Thus, if the money earned while committing a predicate crime was used to buy a home or car, those properties would be subject to forfeiture. The government has authority to forfeit all proceeds of an SUA.

Facilitating Property

A select group of federal crimes also provide for the forfeiture of any property used in furtherance of committing a crime regardless of whether the property was purchased with criminal proceeds. An example of facilitating property would be a vehicle used to transport cocaine. Another would be clean money in a bank account used to conceal criminal proceeds laundered into the same account. The most common examples of crimes for which facilitating property is subject to forfeiture are 1) money laundering; 2) narcotics trafficking; 3) human trafficking; 4) unlicensed money remitting; 5) racketeering; and 6) trafficking in counterfeit goods.

Assets of a Terrorist

The broadest area of forfeiture permitted under U.S. law concerns terrorism violations. Essentially, all property used in an act of terrorism or owned by a terrorist is subject to forfeiture without the need for tracing or connecting the property to criminality.[35]

Seized Assets from Operation Malicious Mortgage

INVESTIGATIVE RESOURCES

While investigating money laundering and asset forfeiture cases, investigators have numerous sources of information at their disposal. Nine prove as particularly useful.[36]

1) *Bank Secrecy Act reports:* Financial institutions, including some casinos and merchants, must file currency transaction reports, foreign bank account reports, suspicious activity reports (SARs), and similar documents with the Financial Crimes Enforcement Network (FinCEN). These can help investigators connect laundered or concealed assets. SARs provide a tremendous source of intelligence, often actionable, and can help to proactively launch new investigations. They also assist investigations reactively by identifying accounts, no-show jobs, previously unknown associates, and many other valuable forms of information. SAR review teams exist around the country where multiple agencies examine the reports with prosecutors and choose viable targets. Financial institutions must provide the supporting documentation behind a SAR upon request from law enforcement. No subpoena is required.[37]
2) *EGMONT:* This network consists of the financial intelligence units of over 100 countries and permits law enforcement to request data in support of a significant money laundering or terrorist financing investigation. At a minimum, the information will include the requested country's equivalent of SARs filed on the subjects of the request. No subpoena, prosecutor, or court involvement is needed, and law enforcement can make the request through FinCEN.
3) *Mutual Legal Assistance Treaty:* A formal request for records or enforcement action by a foreign country is made through DOJ's Office of International Affairs.[38]
4) *FEDWIRE:* The New York Federal Reserve Bank can search names, addresses, and account numbers for any fund transfers done through its system. Often, this will reveal previously unknown beneficiaries and accounts.[39]
5) *Clearing House Interbank Payment Systems (CHIPS):* A subpoena can be served to search the CHIPS network, used by financial institutions to process wire transfers.[40]

6) *Mail covers:* A request through the U.S. Postal Inspection Service will provide the information featured on the outside of envelopes. Often, this will identify financial institutions the subjects of the investigation deal with, as well as shell corporations, virtual offices, and phone companies.
7) *Tax returns:* Through a court order obtained by the U.S. Attorney's Office, the investigator can examine relevant tax returns, which often will yield the location of accounts, as well as front companies and shell corporations through which individuals launder money.[41] Investigators or prosecutors working with a subject who is cooperating or proffering can request the individual to sign IRS Form 8821, which authorizes the release of the subject's tax records without the need for a court order.
8) *Patriot Act 314(a) search:* This likely is the most important money laundering tool available. Investigators can request FinCEN to post on a secure Web site the names of any individuals or entities who are subjects of a significant money laundering or terrorist financing investigation. All U.S. financial institutions then must advise the inquiring investigator of any accounts in the names of the requested subjects along with contact information for service of a subpoena. This method is far superior to serving a subpoena on the credit bureaus because the investigator will learn of all domestic accounts and not just those linked to some form of credit. No subpoena, prosecutor, or court involvement is needed, and law enforcement can make the request through FinCEN.
9) *Correspondent bank accounts:* Virtually all foreign banks maintain correspondent accounts, also known as interbank accounts, in the United States to conduct American dollar transactions on behalf of their customers. These simply are accounts opened at U.S. banks in the name of a foreign financial institution. Even without jurisdiction over a foreign bank, investigators can serve a grand jury subpoena and receive records of any checks or wire transfers that cleared through the U.S. correspondent account on behalf of the foreign bank.[42] By learning the senders or beneficiaries of these transactions, the investigator can determine the likely beneficial owners of the foreign account, as well as other foreign and domestic accounts involved in the money laundering cycle. And, where forfeitable funds are traced to a financial institution in a country that will not cooperate with the United States, DOJ can

Seized Assets from Operation Malicious Mortgage

authorize the use of Section 981(k), a Patriot Act provision, which permits the seizure from a U.S. correspondent account of a sum equivalent to the amount of criminal proceeds laundered to the foreign bank. The U.S. correspondent bank relinquishes the money and provides the foreign bank with the seizure warrant so that the foreign bank can recoup the amount seized from its correspondent account by taking the same sum from its account holder. The foreign bank usually is not complicit in the money laundering but is subject to the seizure based on its role in holding the money launderer's funds overseas. The Section 981(k) seizure authority can often be obtained within a few weeks.[43]

CONCLUSION

The 21st Century has ushered in a wave of technologically savvy professional money launderers. While the challenges in apprehending them are apparent, an investigator familiar with money laundering and asset forfeiture tools and laws will find the means to disrupt and dismantle any criminal activity done for profit. This includes transnational criminal enterprises, which depend on earning and moving large sums of money for survival.

Sending a convicted criminal to prison is a significant deterrent to the commission of future crimes. However, the deterrence becomes much more powerful when combined with the arsenal of asset forfeiture laws available to deprive criminals of everything that motivated them to commit the crimes in the first place.✦

> ***While investigating money laundering and asset forfeiture cases, investigators have numerous sources of information at their disposal.***

Endnotes

[1] DOJ's Asset Forfeiture and Money Laundering Section (AFMLS) has produced a flip chart, an excellent tool to assist investigators in applying the elements of a money laundering case. Also known as the Money Laundering Flipper, law enforcement officers can obtain it free of charge by calling AFMLS at 202-514-1263.

[2] Many crimes fall within the definition of an SUA. The entire catalogue of these violations is located at 18 U.S.C. §1956(c)(7), which also incorporates other criminal statutes.

[3] The movement can be as simple as the handing of money from one party to another. *See* 18 U.S.C §1956(c)(3) for the full definition of "financial transaction," which encompasses most forms of transfer, including physical.

[4] 18 U.S.C. §1956(a)(1). Concealment and promotion are the two most common money laundering theories and, therefore, serve as the focus of the article. The less frequently prosecuted theories involve the movement of SUA proceeds to either 1) evade taxes, 18 U.S.C. §1956(a)(1)(A)(ii); or 2) avoid currency reporting requirements, 18 U.S.C. §1956(a)(1)(B)(ii).

[5] *See, e.g., United States v. Persaud,* 411 Fed. Appx. 431, 434 (2d Cir. 2011); *United States v. Frazier,* 605 F.3d 1271, 1282 (11th Cir. 2010); *United States v. Gallardo,* 497 F.3d 727, 737 (7th Cir. 2007), *cert. denied,* 129 S.Ct. 288 (2008); *United States v. Pizano,* 421 F.3d 707, 723 (8th Cir. 2005), *cert. denied,* 546 U.S. 1204 (2006).

[6] 18 U.S.C. §1956(a)(1).

[7] 18 U.S.C. §1956(a)(2)(A).

[8] There also is a provision for charging the international movement of money for concealment, but to prevail on that theory the funds must be SUA proceeds. 18 U.S.C. §1956(a)(2)(B)(i). Also, moving SUA proceeds to avoid currency reporting requirements may be charged. 18 U.S.C. §1956(a)(3)(C).

[9] Subject to availability, the DOJ Asset Forfeiture Fund may be used to finance reverse money laundering transactions. *See* 28 U.S.C. §524(c). The Treasury Forfeiture Fund has similar authority. *See* 31 U.S.C. §9703(a)(2)(B)(i). Investigators should contact their headquarters components to apply for forfeiture funds when needed to carry out a money laundering sting. The author would like to acknowledge DOJ Asset Forfeiture Management Staff Director Candace Olds, Deputy Director Robert Marca, AFMLS Chief Jennifer Shasky, and Business Manager Tim Virtue for their contributions to many FBI money laundering stings over the years, none of which would have been possible without them.

[10] 18 U.S.C. §1956(a)(3). Also, moving SUA proceeds to avoid currency reporting requirements may be charged. 18 U.S.C. §1956(a)(3)(C).

[11] *United States v. Huber,* 2002 WL 257851 (D.N.D. 2002); *United States v.*

Caruso, 948 F.Supp. 382, 390-91 (D.N.J. 1996).

[12] 31 U.S.C. §5312(a)(2).

[13] 18 U.S.C. §1957(a).

[14] *United States v. Prescott,* 42 F.3d 1165 (8th Cir. 1994).

[15] *United States v. Robertson,* 67 Fed. Appx. 257, 269 (6th Cir. 2003).

[16] *United States v. Threadgill,* 172 F.3d 357, 367 (5th Cir. 1999), *cert. denied,* 528 U.S. 871 (1999).

[17] *United States v. Angotti,* 105 F.3d 539 (9th Cir. 1997).

[18] *United States v. Whitfield,* 543 U.S. 209 (2005), *rehearing denied,* 544 U.S. 913 (2005).

[19] For a full review of federal asset forfeiture by an expert in this area of the law, *see* Stefan D. Cassella, *Asset Forfeiture in the United States* (Huntington, NY: JurisNet, 2006).

[20] AFMLU manages the FBI's Money Laundering and Asset Forfeiture Programs and can facilitate any adoption for which FBI assistance is sought. The main number for unit personnel is 202-324-8628.

[21] *See* 18 U.S.C. §983(a)(1), (2); 19 U.S.C. §1602 *et seq*.

[22] Or 90 days if the property was seized by state or local law enforcement during a state investigation and adopted by federal law enforcement. 18 U.S.C. §983(a)(1)(A)(iv). There is a provision for delayed notice if it would jeopardize an ongoing investigation. 18 U.S.C §983(a)(1)(B),(C),(D).

[23] Federal Rule of Criminal Procedure 32.2(a).

[24] *Id.*

[25] Federal Rule of Criminal Procedure 32.2(b)(5).

[26] Federal Rule of Criminal Procedure 32.2(e).

[27] All crimes for which civil forfeiture is available also may serve as predicates for criminal forfeiture. 28 U.S.C. §2461(c).

[28] *See* generally, Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, 28 U.S.C. App. Civil forfeiture can be used even against a defendant acquitted of criminal charges. *United States v. Ursery,* 518 U.S. 267 (1996). However, if a criminal defendant was convicted of a crime but prevailed during the forfeiture phase of the trial, principles of *res judicata* would preclude a subsequent civil forfeiture action.

[29] See Federal Rule of Civil Procedure 38.

[30] 18 U.S.C. §983(d).

[31] 18 U.S.C. §983(d)(2).

[32] 18 U.S.C. §983(d)(3)(A).

[33] *See* Federal Rules of Civil Procedure 26-37.

[34] *See* 18 U.S.C. §981(g).

[35] *See* 18 U.S.C. §981(a)(1)(G).

[36] In addition to program management, AFMLU investigates Priority International Money Laundering Threat (PIMLAT) cases opened by the unit. AFMLU welcomes the opportunity to collaborate on best practices for investigating money laundering, as well as working joint PIMLAT and other money laundering investigations with other agencies. AFMLU can be reached at 202-324-8628.

[37] 31 C.F.R. §103.18(d).

[38] The best way for an investigator to begin the formal process or to decide if it is worthwhile to proceed with a formal request is to contact DOJ's Office of International Affairs by calling 202-514-0000 and asking to speak to an attorney assigned to handle the country where the request will be sought.

[39] A FEDWIRE search is initiated by serving a subpoena on the Federal Reserve, 33 Liberty Street, New York, NY 10045.

[40] CHIPS subpoenas are served by mail to 100 Broad Street, New York, NY 10004.

[41] The U.S. Attorney must personally approve an application for tax return orders. The investigator must show reasonable cause to believe: 1) federal criminal violations have been committed; 2) relevant evidence will be found in the tax returns; and 3) the evidence cannot reasonably be obtained from other sources, or the tax returns will provide the most probative form of evidence. 26 U.S.C. §6103(i).

[42] Investigators can learn the location of a foreign bank's U.S. correspondent account by consulting the Bankers Almanac. DOJ's AFMLS, International Unit keeps current editions of this volume and can be consulted at 202-514-1263. Also, Thomsons Global is a commercially available service that provides this information; its Web site is *http://www.tgbr.com*.

[43] AFMLS administers the 981(k) process. Requests and inquiries can be directed to the AFMLS International Unit at 202-514-1263.

[44] *United States v. Shafer,* 608 F.3d 1056, 1067 (8th Cir. 2010).

[45] AFMLS has a chart, Forfeiture in a Box, referencing virtually all federal crimes giving rise to forfeiture. It is available by calling 202-514-1263.

[46] *See* Federal Rule of Criminal Procedure 32.2(b)(1)(A) [forfeiture]; 18 U.S.C. §3556 [restitution].

[47] 18 U.S.C. §3664(m)(1)(A).

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The FBI's Asset Forfeiture and Money Laundering Unit (AFMLU) stands ready to assist and collaborate with other law enforcement organizations concerning these matters. Unit personnel can be reached at 202-324-8628.

Law enforcement officers of other than federal jurisdiction who are interested in this article should consult their legal advisors. Some police procedures ruled permissible under federal constitutional law are of questionable legality under state law or are not permitted at all.

San Diego County, California, Law Enforcement Memorial

The San Diego County Law Enforcement Memorial was dedicated on May 10, 2011. The bronze statue, entitled "A Tribute to Service, the Ultimate Sacrifice," depicts a kneeling sheriff presenting a folded American flag to a grieving widow and her son. Behind them, a deputy sheriff stands with an outreached hand to offer support. In addition to this outdoor tribute, the department has a freestanding display in the lobby of the sheriff's administration center. This display features black granite tiles etched with photographic images of fallen deputies, their names, and end-of-watch dates within a sheriff's star. Each year on the anniversary of the deputy's death a small flower appliqué is attached. Smaller versions of this memorial have been displayed at all of the San Diego County Sheriff's Department facilities.

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Patch Call

The patch of the Osage City, Kansas, Police Department prominently references the city's proud past and brilliant future. One of the city's famous 6th Street light poles is shown in the center, followed below by strands of wheat, a well-known staple in Kansas. The background depicts a flowing American flag symbolizing national pride, as well as the city skyline with its large water tower. To the right is a representation of the Osage Indian, after which the city is named.

The city of North Miami Beach, Florida, was established in 1926 as Fulford by the Sea. Shortly after its founding, a hurricane destroyed three of the four stone water fountains built at the city's four corners. The remaining fountain, which still stands, is depicted as a symbol of perseverance on the patch of the city's police department. The patch also depicts the city's popular seashore, a palm tree, and the sun with rays, three symbols reminiscent of the Great Seal of Florida.